IBLA 86-208   Decided May 13, 1987

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims invalid for failure to timely file a copy of the notice or certificate of location of such claims. U MC 286045 through U MC 286054.

Reversed

1.   Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Where the 90th day following the date of location of a mining claim falls on a Sunday, a day that the proper BLM office for recording such claim is officially closed, recordation is timely if a copy of the official record of the notice or certificate of location is hand delivered on Monday, the 91st day after location.

APPEARANCES: Marion Birch, Price, Utah, for Birco Development.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Marion Birch, on behalf of Birco Development, has appealed from a November 22, 1985, decision of the Utah State Office, Bureau of Land Management (BLM), declaring lode mining claims U MC 286045 through U MC 286054 invalid for appellant's failure to file a copy of the official record of the notice or certificate of location with BLM within 90 days after the date of location. These claims had been located on June 10, 1985, and the 90-day period for recording them with BLM ended on Sunday, September 8, 1985. Location notices for the claims were filed with BLM on Monday, September 9, 1985.

In the statement of reasons, Birch states he contacted BLM on September 6, 1985, to ask if he recorded the notices of location for these mining claims with BLM on September 9, 1985, whether they would be considered to have been timely filed. He asserts BLM assured him filing on September 9 would be satisfactory. He also states BLM reassured him when he recorded the notices of location with BLM that they were properly filed.

Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), and 43 CFR 3833.1-2 require the owner of an unpatented mining claim located on public land after October 21, 1976, to

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file "a copy of the official record of the notice of location or certificate of location" with BLM within 90 days after the date of location. Failure to file the required document within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. "Filed or file" means being received and date stamped by the proper BLM office. 43 CFR 3833.0-5(m).

As noted, the period for recording these mining claims with BLM ended on September 8, 1985. This particular day was a Sunday and BLM offices are normally officially closed on Sundays. Departmental regulation, 43 CFR 1821.2-2(e), provides for such circumstances as follows:

> Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.

Thus, if the Utah State Office, BLM, was officially closed on Sunday, September 8, 1985, and the mining claims in question were recorded on the following day, Monday, September 9, 1985, the cited regulation prevails, and the claims should be deemed to have been properly recorded in accordance with the requirements of FLPMA. See also 43 CFR 4.22(e) and Ida Mae Rose, 73 IBLA 97 (1983), for an analogous situation involving the filing of a notice of appeal.

There is nothing in the record to suggest an unusual situation existed and this particular BLM office was open for business on September 8, 1985. We therefore conclude that appellant's recordation of the claims with BLM on Monday, September 9, 1985, satisfies FLPMA requirements.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is reversed.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge